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EXTRAORDINARY PART II—Section 3 PUBLISHED BY AUTHORITY

o. 12] NEW DELHI, TUESDAY, JANUARY 13, 1953

ELECTION COMMISSION, INDIA NOTIFICATION

New Delhi, the 13th January 1953

S.R.O. 116.—Whereas the election of Shri Ramesh Jha as a member of the Legislative Assembly of the State of Bihar from the Dharhara Constituency of that Assembly has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Chitra Narain Thakur, s/o late Thither Thakur, Village Sulindabad, P.S. Bungaon, P.O. Saharsa, District Bhagalpur;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order on the said Election Petition;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, BHAGALPUR.

ELECTION PETITION No. 78 OF 1952 AND ELECTION CASE No. 1 OF 1952

The Representation of the People Act, 1951.

and

The Representation of the People (Conduct of Election and Election Petitions) Rules, 1951

Sri Chitra Narain Thakur, son of late Sri Thither Thakur, by caste a Bhumihar, by profession a cultivator, a resident of village Sulindabad, police station Bungaon, P.O. Saharsa, District Bhagalpur—*Petitioner*.

Versus

1. Sri Ramesh Jha, son of Sri Ganesh Jha, by caste Brahman, Maithili, a resident of village Garhia, police station Bungaon, P.O. Bariahi, District Bhagalpur.
2. Sri Ramanugrah Jha, a resident of village Muradpur, police station Dharhara, P.O. Nawhatta, District Bhagalpur.
3. Sri Basudeo Kamat, a resident of village Kedali, by caste a Dhanuk, P.O. Nawhatta, police station Dharhara, District Bhagalpur.

4. Sri Jai Narain Singh, by caste a Rajput, a resident of village Baghaur, P.S. Dharhara, District Bhagalpur.
5. Sri Umakant Jha, by caste a Brahman Maithil, a resident of village Mahisi, P.S. Dharhara, District Bhagalpur.
6. Sri Hemnath Jha, by caste a Brahman Maithil, a resident of village Patuahar, P.S. Bangaon, District Bhagalpur—*Respondents*.

For Petitioner:—

Sri Udai Narain, Advocate.

Sri Hirday Narain and Sri Satyanarain, Pleaders.

For Respondent No. 1:—

Sri Ranjit Sinha and Sri Niraj Chandra Ganguly, Advocates and Sri Baldeo Narain and Parmeshwari Pd. Varma, pleaders.

PRESENT.

Sri K. Sahai, Barrister-at-Law—*Chairman*.

Sri Umakanta Prasad Sinha, retired Dist. & Sessions Judge.

Sri Rajeswari Prasad, Advocate

} Members of the
Election Tribunal.

JUDGMENT

This election petition has been filed by Sri Chitra Narain Thakur who was a candidate on behalf of the Congress Party for election to the Bihar Legislative Assembly from Dharhara Constituency at the last general election held in January, 1952. All the six respondents were also duly nominated as candidates for election to the same seat in the Bihar Legislative Assembly but respondents Nos. 4, 5 and 6 withdrew their candidature. The contest actually took place between the petitioner and the first three respondents. Sri Ramesh Jha, respondent No. 1, was a candidate on behalf of the Socialist Party and Sri Ramanugrah Jha, respondent No. 2 and Sri Basudeo Kamat, respondent No. 3, were Independent candidates. When the votes polled at the election were counted, it was found that the candidates had secured the number of votes noted below against their names:—

Sri Ramesh Jha	...	...	10,884
Sri Chitra Narain Thakur	...	...	10,415
Sri Ramanugrah Jha	...	...	1,600
Sri Basudeo Kamat	...	...	1,367

On 6th February, 1952, the result was announced and Sri Ramesh Jha was declared to be elected. This was published in the *Bihar Gazette* on 18th February, 1952. Notice that the return of election expenses and the declaration made in respect thereof had been lodged with the Returning Officer was published in the *Bihar Gazette* on 29th March, 1952. The petitioner filed this election petition before the Election Commission on 31st March, 1952.

The petitioner's case is that the election of Sri Ramesh Jha has been vitiated by corrupt and illegal practices. He has given several instances of such practices but we need not mention them here as we will have to mention them when discussing whether the commission of corrupt and illegal practices has been proved. The petitioner's case further is that Sri Basudeo Kamat, respondent No. 3, was dismissed from Government service in 1950 on a charge of corruption and hence he was illegally and improperly nominated as a candidate in spite of the petitioner's objection. He has also alleged that Sri Gangadhar Thakur and Sri A. C. Chakravarty, two officers who acted as Presiding Officers at several Polling Booths in the constituency in question, were sympathetic towards the Socialist candidate, Sri Ramesh Jha, and did many illegal and improper acts while acting as Presiding Officers to help him in getting elected. The petitioner's case also is that the workers of Ramesh Jha canvassed within 100 yards of the polling station at Bangaon, Rakia, Patori, Bishanpur and Sihaul with his connivance and that the counting of votes was done in an illegal and improper manner. The petitioner prays that the election of Ramesh Jha, respondent No. 1, be declared to be vitiated and that he himself be declared to have secured the majority of votes.

Out of the six respondents, only respondent No. 1 has appeared and contested his case. In the written statement which he has filed, he has denied the allegations relating to the commission of corrupt and illegal practices by him or by any one on his behalf with his knowledge and connivance. He has also denied the allegations that Sri Basudeo Kamat was dismissed from Government service in 1950, that Sri Gangadhar Thakur and Sri A. C. Chakravarty were sympathetic towards him and did many acts to help him in getting elected, that his workers canvassed within 100 yards of several polling stations and that the counting of votes was done in an illegal or improper manner. His case further is that he took all reasonable means for preventing the commission of corrupt and illegal practices at the election, that the election petition is not maintainable and that it is barred by limitation.

On the pleadings of the parties, the following issues have been framed:—

ISSUES

1. Is the petition maintainable?
2. Is the petition barred by limitation?
3. Was corrupt and illegal practice as alleged by the applicant ever practised by Respondent No. 1 or any one on his behalf with his full knowledge and connivance?
4. Was there no free election due to the alleged corrupt and illegal practice of Respondent No. 1 or any one on his behalf with his knowledge and connivance? Has the election been materially affected by the alleged corrupt and illegal practice?
5. Whether the acceptance of the nomination paper of Basudeo Kamat, Respondent No. 3, was improper and whether it has materially affected the election?
6. Did Respondent No. 1 take all reasonable means for preventing the commission of corrupt and illegal practices at the Election?
7. Was the counting made in violation of law and did it affect the result of the election?
8. Were the ballot papers of some registered voters illegally recorded as "tendered votes"?
9. Did Sri Gangadhar Thakur and Sri Chakravarty, two of the Presiding officers of this constituency, do any act for the furtherance of the prospects of the election of Respondent No. 1?
10. Did the workers of Respondent No. 1 canvass for the votes on his behalf with his knowledge within 100 yards of some polling stations as alleged by the applicant?
11. What relief or reliefs the applicant is entitled to?

FINDINGS

Issue No. 1.—This issue has not been pressed. We do not find anything against the maintainability of the petition. This issue is, therefore, answered in the affirmative.

Issue No. 2.—This issue has also not been pressed. The petition was filed well within time and we, therefore, hold that it is not barred by limitation. This issue is thus answered in the negative.

Issue No. 5.—Basudeo Kamat, respondent No. 3, was previously a clerk in the office of the Additional District Magistrate of Saharsa. Entries in his service book are Exts. G to G-3. They show that he resigned his post with effect from 31st July 1950 and not that he was dismissed from service. Ext. N is a certified copy of the ordersheet of the Returning Officer relating to the Dharhara constituency. The order dated 26th November 1951 shows that no objection was raised by anyone to the nomination of Basudeo Kamat and his nomination paper was declared to be valid. In these circumstances, it is manifest that the petitioner's allegation that Basudeo Kamat was dismissed from Government service and his allegation that he objected to Basudeo Kamat's nomination are incorrect. We, therefore, hold that the nomination of Basudeo Kamat was not improper and his nomination has not materially affected the election. This issue is thus answered in the negative.

Issue No. 8.—This issue has not been pressed. There is no evidence to show that the ballot papers of some registered voters were illegally recorded as "tendered votes". This issue is, therefore, answered in the negative.

Issues Nos. 3, 4, 7, 9 and 10.—We take up all these together for the sake of convenience and we proceed to discuss one by one each of the allegations of the petitioner which come under these issues.

1. It is alleged that the petitioner's canvasser Upendra Narain Singh was leading a procession of Congress volunteers who were shouting Congress slogans in village Bara, police-station Bangaon, on 21st December, 1951 when a Socialist named Jatashanker Choudhury collected a mob, forcibly dispersed the procession and snatched away Congress flags, leaflets etc. from the processionists. Upendra Narain Singh (P.W. 1), Bambhola Tanti (P.W. 11) and Rudradutta Thakur (P.W. 16) have supported this allegation. They have also said that they went again to village Bara 3 or 4 days later along with some others but 15 or 20 young-men threw brickbats at their party just before they entered the village.

All these three witnesses are interested because they were admittedly Congress workers at the time of the last election. Had flags, leaflets etc. been snatched away from Congress workers, they could have easily reported the incident or incidents at the police-station. P.W. 1, who was the leader of the party admits that he did not make any report at the police-station. With regard to the second incident when brickbats are alleged to have been thrown at the Party of Congress workers, P.W. 11 admits that no member of the party was injured. P.Ws. 1 and 11 say that their party stopped when brickbats started being pelted upon them and that the persons who were attacking them stopped throwing brickbats, came near them and then snatched away the flags and posters etc. This story shows that the Congress workers were anxious to get their flags and posters snatched away from them because there could be no reason otherwise for them to keep standing until these things had been snatched. This is extremely improbable. Besides, no resident of village Bara has been examined to support these allegations. Jatashanker Choudhury (R.W. 11) is the Secretary of the Saharsa District Socialist Party. He says that he was not in Bara in the third week of December, 1951 and that he never interfered with Congress canvassers. On a consideration of the evidence and circumstances mentioned above, we have come to the conclusion that the petitioner's allegations relating to interference with Congress workers on two occasions at Bara are not true.

2. It is alleged by the petitioner that a meeting was arranged on behalf of the Congress party to be held at village Bangaon on or about 25th December 1951 and Pandit Rajendra Mishra, the sitting M.L.A., was to address it but Ramesh Jha, Jatashanker Choudhury and others came there abused Rajendra Mishra and other Congress members and forcibly dispersed the meeting. Shivaji Prasad Singh (P.W. 8) and Ariun Missir (P.W. 29) have supported this allegation. These two witnesses have said that the meeting was to be held near Durga Asthan. P.W. 29 is a resident of Bangaon and he was the petitioner's polling agent at Bangaon booth during the last election. He says that he and his relations were present at the meeting but none of them protested when Ramesh Jha and others began to break up the meeting. It is also curious that no one reported the incident at the police-station which is, according to P.W. 29 himself, at a distance of half a mile from Durga Asthan. Jatashanker Choudhury (R.W. 11) and Ramesh Jha who has examined himself as R.W. 27 have both denied this allegation. R.W. 15 is a Pujari of Durga Asthan and he has stated that no meeting is ever held in the compound of the Durga Asthan and that no meeting was arranged on behalf of the Congress party at or near Durga Asthan at Bangaon. We do not see any reason to disbelieve this Pujari. We, therefore, hold that the petitioner's allegation relating to this incident is not true.

3. It is alleged that Ramesh Jha, respondent No. 1, beat Parmanand Missir as the latter canvassed for the petitioner. There is no evidence in support of this allegation. We, therefore, hold that it has not been established.

4. The petitioner alleges that he was at village Maisarho on 19th January 1952 with his supporter, Pandit Suraj Narain Jha of village Parai, when Ramesh Jha came there with his workers Umesh Jha and Tulmohan Ram and abused the petitioner. He also alleges that Ramesh Jha took out a procession shortly afterwards and the processionists were shouting slogans to the effect that those who voted against Ramesh Jha would be visited with dire consequences. Suraj Narain Jha is P.W. 25 and the petitioner himself is P.W. 49. Both of them have supported the allegations relating to these incidents. The petitioner himself is necessarily an interested witness and P.W. 25 admits that he was the petitioner's canvasser at the time of the last election. Both these witnesses have said that they were sitting at the dallas of Bikkam Sao of Maisarho when Ramesh Jha and others came there and abused the petitioner and also when Ramesh Jha took out a procession. P.W. 25 says that 3 or 4 persons of Maisarho were sitting with him and the petitioner at the time when the incidents took place but no resident of Maisarho has been examined. P.W. 49 admits that he did not report these incidents to any officer within whose jurisdiction village Maisarho fell. Madho Pandit (R.W. 9) is a resident of village Maisarho. He says that Bikkam Sao's house is just across

a path from his house and that no incident as alleged by the petitioner took place. Tulmohan Ram who is alleged to have been with Ramesh Jha at the time of this incident is R.W. 12. He was a Socialist candidate for election to the Bihar Assembly from Saur-Sonbarsa constituency and polling in his constituency took place from the 4th to the 21st January, 1952. He must have been too busy with his own election to visit Maisarho with Ramesh Jha and we accept his evidence when he says that he did not go to Maisarho on 19th January 1952, the alleged date of this incident. Umesh Jha (R.W. 17) and Ramesh Jha himself (R.W. 27) have denied the allegations, relating to these incidents. We have come to the conclusion that the petitioner's allegations in connection with these incidents are not correct.

5. The petitioner alleges that Ramesh Jha, respondent No. 1, went to village Arrahpatti on 8th January 1952 along with a number of lathials and threatened the voters of that village to refrain from voting for the Congress candidate, namely, the petitioner. No evidence has been led in support of this allegation. We, therefore, hold that this allegation has not been established.

6. It is alleged that about 75 voters were proceeding from village Arrahpatti to the polling station at Mahesi M. E. School to cast their votes on 9th January 1952 and they had to cross a river at Panpibbi ghat and that Ramesh Jha and his supporters forced the ferry-men at that ghat to remove the boat with the result that the voters could not get across the river and were thus prevented from casting their votes. Upendra Narain Singh (P.W. 1), Ramnarain Choudhry (P.W. 38), Sk. Kassim (P.W. 39) and Sk. Aziz (P.W. 44) have supported this allegation. We may mention that the petitioner was directed by us to give the names of the voters who were alleged to have been prevented from crossing the streamlet at Panpibbi ghat. The petitioner gave a list of 19 such voters in his petition dated 27th November 1952. Sk. Aziz has been named in this list but Ramnarain Choudhry and Sk. Kassim who claim to have been two of the voters who were prevented from crossing Panpibbi ghat have not been named in it. Upendra Narain Singh claims to have gone to Arrahpatti to bring the voters to Mahesi on behalf of the petitioner but even he has not been named in the list. The omission of the names of P.Ws. 1, 38 and 39 from the list contained in the petition gives rise to a suspicion that they have been prevailed upon after 27th November 1952 to support this allegation falsely.

The story of P.W. 1 is that when he came with about 70 or 75 voters of Arrahpatti to Panpibbi ghat and asked the Mallahs to take them to the other side the Mallahs refused to do so without payment. The voters refused to make payment as they said that the Mallahs were paid annually in grains. Thereupon Ramesh Jha and others who were on the other side of the streamlet said that the Congress people never paid for work done and that the boatmen should bring their boat to that side. The boatmen then took the boat to the middle of the stream. None of the other three witnesses speaks of the presence of Ramesh Jha. P.W. 38 admits that the ordinary fare for crossing the ghat is /3/- per head and that none of the persons in his company was willing to pay the fare. P.W. 44 says that there were some persons with red caps on the other side of the stream and that they shouted to the boatmen that they should bring the boat to the other side as they (P.W. 44 and his companions) were not paying them their fare. Even if the evidence of these witnesses is assumed to be correct, it would appear that the boatmen did not take the voters across the streamlet because they were not willing to pay the fare. Ramesh Jha cannot be held to have been there because the evidence of P.W. 1 about his presence has not been supported by any other witness. Even if the persons who were wearing red caps asked the boatmen to bring the boat to the other side, it is possible that they did so because they did not like waiting while the boatmen were wrangling with the alleged voters.

We may, however, mention that R.W. 5 is a co-sharer landlord with'n whose zemindari Panpibbi ghat lies. He says that no boat plies in the streamlet at that ghat except a relief boat which plies there during the rainy season. R.W. 8 is a resident of Arrahpatti and he says that the water in the river at Panpibbi ghat was a little over knee-deep on the day of polling at Mahesi. R.W. 10 is the elder brother of P.W. 38. He also says that no boat plies in the river at Panpibbi ghat at any time except during the rainy season and that the water was just a little over knee-deep on the day of polling at Mahesi. Ramesh Jha (R.W. 27) himself denies that he ever asked the boatmen at Panpibbi ghat to remove their boat to the other side.

On a consideration of the evidence adduced on behalf of both parties, we have come to the conclusion that R.Ws. 5, 8 and 10 have given truthful evidence and that the water in the river at Panpibbi ghat on 9th January 1952 was only a little over knee-deep. We are, therefore, unable to accept the petitioner's allegation in connection with this incident.

7. There is a place called Karu Asthan which is situated in village Mahpura. The deity installed in that asthan is believed to be the presiding deity for cattle. The petitioner alleges that Kanhai Khirhar is the principal pujari or Bhagat of that asthan and that, at the instance of Ramesh Jha, he used to canvass voters saying that the milch cattle of those voters who did not vote for Ramesh Jha would go dry and that there would be an outbreak of epidemic amongst their cattle. He further alleges that voters were terrorised into voting for Ramesh Jha owing to this threat of divine displeasure. P.Ws. 1, 7, 10, 31, 32, 41, 43, 47 and the petitioner (P.W. 49) himself have deposed in support of these allegations. All these witnesses have said that Kanhai Khirhar is the principal Bhagat of Karuasthan.

P.Ws. 1 and 49 have said that Kanhai Khirhar used to threaten voters by saying that their cattle would die of disease and he would not help them if they did not vote for the socialist candidate i.e. Ramesh Jha. On the other hand, P.Ws. 7, 10, 31, 32, 41, 43 and 47 have stated that Kanhai Khirhar used to say that he would not come to the aid of those voters who did not vote for the Socialist candidate when there was an epidemic amongst their cattle. P.Ws. 47 and 49 say that Kanhai Khirhar used to say that the milch cattle of the voters would go dry if they did not vote for the Socialist candidate. Thus the evidence of the witnesses on this point is discrepant.

The respondent has examined Kanhai Khirhar himself and he is R.W. 4. He says that his father is a resident of village Bhelahi and his Nana was a resident of village Mahpura. He has further said that he has been residing at Mahpura for the last 8 or 10 years because he has inherited his Nana's properties as his mother was the only child of his Nana. He has also said that he had never been a Bhagat of Karuasthan and that Buchi Khirhar is at present the Bhagat. He denies that he ever canvassed for Ramesh Jha though he admits that he worked as the polling agent of Ramesh Jha at Mangrauni and Rajhanpur booths. Debnrain Khirhar (R.W. 14) is a member of the same family as Buchi Khirhar. He says that Buchi Khirhar is and that Kanhai Khirhar is not the Bhagat of Karuasthan. He adds further that bhaginwans i.e. collaterals do not succeed as Bhagats of Karuasthan. There seems to be no reason to disbelieve the evidence of this witness. Ramesh Jha (R.W. 27) himself has said that Kanhai Khirhar never canvassed for him and never went out with him when he went out for canvassing.

R.W. 4 says that he worships at Karuasthan and R.W. 14 says that only Bhagats worship the Pindi in Karuasthan. On this basis, it has been argued on behalf of the petitioner that Kanhai Khirhar (R.W. 4) is a Bhagat of Karuasthan. A person may worship a deity from outside the asthan also. R.W. 4 does not say that he worships the Pindi and we feel that all that he means is that he shows respect to the deity. We are, therefore, unable to accept the argument.

In view of the discrepancies in the evidence adduced on behalf of the petitioner and in view of the fact that we consider R.Ws. 4 and 14 to be reliable, we hold that the allegation that Kanhai Khirhar used to canvass on behalf of Ramesh Jha as well as the allegation that he used to threaten voters with divine displeasure if they did not vote for Ramesh Jha are incorrect.

8. The petitioner alleges that Bahadur Thakur and other agents of Ramesh Jha brought certain voters to the Bishunpur polling booth on 19th January 1952 in a Jeep, that Sri Gangadhar Thakur, Presiding officer of the polling station, got the Jeep seized and Bahadur Thakur and others arrested and that the Presiding officer who was acting in concert with Ramesh Jha released the Jeep and the arrested persons subsequently. P.Ws. 3, 8, 17 and 33 have been examined to support these allegations.

P.W. 3 is a Civil Court peon and he was deputed to work with Sri Gangadhar Thakur during the last election. He says that a Jeep, flying a red flag, came outside the enclosure at Bishunpur polling booth on the second day of poll there and that the voters who came in that Jeep came into the enclosure. When cross-examined, he said that there were 20 or 25 voters in the Jeep. We do not think it possible for so many persons to have travelled in one Jeep. He admits that a constable was deputed outside the enclosure to see that no conveyance came near it. In view of this admission, it is highly improbable for any Socialist worker to have brought voters in a Jeep openly with the Socialist flag flying. P.W. 8 is the President of the Bangaon Thana Congress Committee. He says that he went to Bishunpur polling booth on the last day of poll there and saw Socialists, including Bahadur Thakur, bringing their voters in a Jeep, that he made a complaint in writing to the Presiding officer who made enquiries and seized the Jeep. He further says that the Jeep came into the outer enclosure and that it was seized by the A.S.I. of Police who was on duty at the polling station. P.W. 17 says that the Socialist used to take their voters to Bishunpur polling station in a Jeep and that Bahadur Thakur was one such voter.

He does not say that the Jeep was ever taken into the outer enclosure but says that it used to stand near that enclosure. P.W. 33 is a dafadar. He was also deputed to work with Sri Gangadhar Thakur during the last election. He says that voters used to be brought to Bishunpur booth on a car with red flags flying and that he saw Bahadur Thakur in that car. As we have already said, we find it difficult to believe that the Socialists could bring voters in a Jeep openly with their flag flying in it. None of these witnesses except P.W. 8 speaks about the seizure of the Jeep. Damodar Prasad Dikshit (P.W. 30) was the Writer Head Constable on duty at Bishunpur and other polling stations at the last election. He has been referred to by some witnesses as an A.S.I. With the permission of the Tribunal, the petitioner's advocate cross-examined this witness but no question has been put to him about the seizure of any Jeep at Bishunpur polling station.

R.W. 6 is Sri Gangadhar Thakur. He has stated that no Jeep of the Socialist party was seized at Bishunpur because the A.S.I. (referring to P.W. 30) whom he had deputed to see where the Jeep was, found that it was on the public road beyond 100 yards of the polling booth. Ext. A-9 is his diary of 19th January 1952. It appears from this exhibit that Sri Gangadhar Thakur deputed the A.S.I. in charge to enquire and take action when a complaint was made to him by the President of the Bangaon Thana Congress Committee, that the Jeep of the Socialist party was found to be on the public road and that it moved away on the A.S.I.'s instruction. There is nothing in the diary to show that any complaint was made to the Presiding officer that voters were being brought in the Jeep.

Jatashanker Choudhury (R.W. 11) says that a Jeep is maintained by the District Socialist party at Saharsa, that he went in that Jeep to Bishunpur polling station, that he did not take any voter in it, that it stood on the road for 5 or 7 minutes, that Writer Head Constable Dikshit (P.W. 30) asked him to remove the Jeep from there and that he got it removed accordingly. R.W. 16 is a resident of Bishunpur and he says that a Jeep came to Bishunpur on the second day of polling, that it stopped on the road near the polling station and that no voter came in it. He seems to be a completely disinterested witness. It has been taken from him in cross-examination that Jatashanker Choudhury (R.W. 11) and the driver were the only persons in the Jeep. Bahadur Thakur (R.W. 24) denies that he ever took any voter to the Bishunpur polling booth in a Jeep. He further says that he was the polling agent of Ramesh Jha at Bishunpur booth. As he was the polling agent, he must have remained mostly at the polling station. Hence we consider it improbable for him to have gone out to bring voters.

After considering the evidence adduced on this point on behalf of both parties, we have come to the conclusion that no voter was brought on a Jeep on behalf of the Socialist party and that all that took place was that R.W. 11 came in the Socialist party's Jeep which stopped outside the polling station at Bishunpur. We, therefore, hold that the petitioner's allegations are not correct and that he has exaggerated what actually happened.

9. The petitioner alleges that Ramesh Jha employed a number of desperados to terrorise the voters of Bhakua and Bishunpur. No witness has been examined in support of this allegation and we, therefore, hold that this allegation has not been established.

10. It is alleged by the petitioner that the inhabitants of villages Bangaon, Parari, Chainpur and Muradpur are mostly Maithil Brahmins, that Ramesh Jha himself is a Maithil Brahmin and that he and his supporters appealed to the Maithil Brahmins of these villages to vote for him on caste basis. P.Ws. 6, 25, 27, 28, 29 and the petitioner (P.W. 49) himself have deposed in support of these allegations. P.Ws. 6 and 49 have added that Brahmin voters used to tell them after propaganda on caste basis that they would vote for the candidate of their own caste. P.Ws. 6, 25 and 27 admit that they were the petitioner's canvassers and P.W. 29 was his polling agent at Bangaon booth. P.W. 28 is the only witness who does not appear to be interested but he states that he remembers the name of only Anandi Misir as one who was asked to vote on caste basis. If any appeal was made to voters to vote on caste basis, we do not think that such an appeal could have been made before a man of another caste. P.W. 28 is a Rajput and hence we feel suspicious about his evidence.

R.Ws. 11 and 27 have denied that they asked the residents of Bangaon, Parari, Chainpur and Muradpur to vote on caste basis. R.Ws. 15, 17, 19, 20 and 24 have denied that there was any appeal to voters on behalf of the Socialists to vote on caste basis. Out of these witnesses, R.Ws. 15, 19 and 20 appear to be quite independent. As they are Brahmins and as they are also residents of Bangaon and Parari, they are certainly competent witnesses to speak on this point.

P.W. 29 admits that Ramesh Jha dines with Harijans, that Maithil Brahmins had outcasted him for that reason and that they began to inter-dine with him from

before he became an M.L.A. He further admits that Maithil Brahmins of Bangaon do not inter-dine with Harijans and that they do not like such practice. Hence it is difficult to see how Maithil Brahmins could vote for Ramesh Jha on caste basis, especially when another candidate, namely, Ramanugrah Jha was also a Maithil Brahmin.

In view of what we have said above, our conclusion is that this allegation of the petitioner is also incorrect. We hold that no appeal was made to voters on behalf of Ramesh Jha to vote on caste basis.

11. It appears that organisations called Bhumisena Dals were set up in different villages by the Socialist party. The petitioner alleges that members of the Bhumisena Dals as well as other Socialist workers used to promise a gift of 20 bighas of lands and a cow to voters who voted for the Socialist candidate, Ramesh Jha. P.Ws. 6, 12, 23, 24, 26, 28, 42 and 49 have supported this allegation. P.Ws. 6, 42 and 49 are interested witnesses as P.W. 6 was a canvasser of the petitioner and P.W. 42 admits that he is a Congress man. The evidence of P.Ws. 12 and 23 is vague as they are unable to say who held out a promise to make the gift and merely say that they were Socialists. P.W. 24 says that he did not tell anybody about the promise. P.W. 26 is the Chowkidar of Patari. He says that Ramesh Jha and Magni Ram Jha as well as their supporters held out the promise but he is unable to name the persons who were present when Ramesh Jha and others held it out. P.W. 28 admits that nobody has been given any land or cow. It seems to us that if Ramesh Jha and his supporters were out to promise gifts to voters, they would have made promises to make small gifts so that those promises could be believed. It is impossible to expect that any voter could be so gullible as to believe a promise of gift of 20 bighas of lands and a cow for merely voting for Ramesh Jha. We, therefore, consider the entire story of promise of such a gift to be improbable and unacceptable.

R.Ws. 11 and 27 have denied that they held out promises of any gifts as mentioned above. R.Ws. 17, 20, 21, 23 and 24 have said that no such promises were made on behalf of the Socialist candidate, Ramesh Jha. R.W. 20 is an independent witness. The other witnesses are polling agents or canvassers of Ramesh Jha but their evidence is consistent with probabilities. We, therefore, accept the evidence of the respondent's witnesses on this point.

It is clear from what we have said above that we find this allegation of the petitioner also to be incorrect.

12. The petitioner alleges that Ramesh Jha and his supporters practised false personation so that wrong persons were made to vote for registered voters. He has given three instances and has alleged that wrong persons voted for (a) Sarjug Devi, wife of Umesh Jha, serial No. 2944, (b) Akal Kamat, son of Mahgu Kamat, serial No. 1429 and (c) Seshmani, wife of Siasaran Mandal, serial No. 342. P.W. 29 has supported the general allegation as well as the specific instances. As P.W. 29, being a polling agent of the petitioner, is an interested witness, we are not prepared to accept his evidence relating to the general allegation of false personation. We consider it necessary, however, to discuss his evidence relating to the specific instances one by one.

(a) *Sarjug Devi, wife of Umesh Jha Serial No. 2944.*—P.W. 29 says that Sarjug Devi is the wife of his Mamu's cousin, that her name is recorded in the electoral roll as the wife of Umesh Jha though she is the wife of Umesh Jha's brother Baldeo Jha and he objected to her being allowed to vote when she said on being questioned that Umesh Jha was her Dewar. It is clear from these statements of P.W. 29 himself that the right person i.e. Sarjug Devi, the registered voter herself, came to vote. His evidence appears to show that he merely objected to her being allowed to vote on the ground that the name of her husband as given in the electoral roll was not correct. Mr. A. C. Chakravarty (R.W. 7) was the Presiding officer at Bangaon booth. Sarjug Devi, bearing serial no. 2944 in the electoral roll polled her vote at that booth on 7th January 1952. R.W. 7 says that she voted for the Assembly election, that she was questioned when she was taking the ballot paper for the Parliamentary election, that she then said that her husband's name was not as written in the electoral roll, that he, therefore, refused to allow her to vote for the Parliamentary election. In the first place, we think that Mr. Chakravarty was wrong in not allowing Sarjug Devi to vote merely because her husband's name was wrongly mentioned in the electoral roll. In the second place, we do not accept the evidence of P.W. 29 that he objected to Sarjug Devi being allowed to vote when she was taking the ballot paper for the Assembly election. We rather accept the evidence of Mr. Chakravarty, supported as it is by his diary dated 7th January 1952 (Ext. 6-2), and his report (Ext. J-3) dated 7th January 1952 which he submitted to

the Presiding officer, that the question about Sarjug Devi's husband was put to Sarjug Devi by P.W. 29 at the time when she was taking the ballot paper for the Parliamentary election after voting for the Assembly election. As the Presiding officer did not know at the time when Sarjug Devi took the ballot paper for the Assembly election that her husband's name was wrongly recorded in the electoral roll because no objection was raised in this connection by P.W. 29 at the right time, we do not think that this was either a case of false personation or a case of Sarjug Devi being illegally allowed to vote.

(b) *Akal Kamat, son of Mahgu Kamat bearing S. No. 1429.*—P.W. 29 says that Akal Kamat son of Mahgu Kamat of Rampur bungalow came to poll his vote at the Bangaon booth and pretended to be Akal Kamat of Thakurpatti, that he objected but the Presiding officer overruled his objection and allowed Akal Kamat to vote, that he filed the petition (Ext. 5-1), that the portion written in English (Ext. 5-2) on that petition is in the pen of the Presiding officer and that Urmilesh Jha a canvasser of Ramesh Jha, had brought Akal Kamat to the booth. In the first place, the allegation in the list of particulars which I have summarised above is that a wrong person voted for Akal Kamat son of Mahgu Kamat, bearing S. No. 1429 in the electoral roll. Serial No. 1429 in the electoral roll (Ext. 7) is actually Akal Kamat, son of Mahgu Kamat. P.W. 29, however, says that Akal Kamat, son of Mahgu Kamat, himself voted for another Akal Kamat, who was a resident of Thakurpatti. His evidence is, therefore, contradictory to the allegation made in the list. In the petition (Ext. 5-1), P.W. 29 has stated that Akal Kamat of Tole Rampur bungalow had been allowed to vote as Akal Kamat of Thakurpatti in spite of objection because he stated that his house was previously in Thakurpatti but he had been residing in Rampur bungalow from 1951. The order (Ex. 5-2) of the Presiding officer (R.W. 7) on the petition (Ext. 5-1) is as follows:—"His name (presumably Akal Kamat's name) occurs in the Register of the Gram Panchayat, (1950) that he is a resident of Thakurpatti tola. The village chowkidar and the Gram Sewak both said that his house was previously in the Thakurpatti tola and now this has been included in the Rampur bungalow tola. This is with respect to Serial No. 1 of the electoral roll, page No. 1 (supplementary)." Thus the complaint before the Presiding officer appears to have been that a wrong Akal Kamat voted for Akal Kamat who bore serial No. 1 at page 1 of the supplementary electoral roll. The supplementary electoral roll is Ext. 7-1. Serial No. 1 relates to Thakurpatti and the name is Akal Kamat without any parentage. Thus the case as put forward by the petitioner in the evidence of P.W. 29 to the effect that a wrong person voted for Akal Kamat bearing serial No. 1 of the supplementary electoral roll is quite contradictory to his case in the list of particulars to the effect that a wrong Akal Kamat voted for Akal Kamat, son of Mahgu Kamat bearing serial No. 1429. He cannot be allowed to prove a case which he did not put forward in his list of particulars. Besides, the evidence of P.W. 29 on this point cannot be accepted because it does not tally with the petitioner's allegation itself.

R.W. 19 is the Mukhia of village Bangaon. He says that there are three Akal Kamats within the jurisdiction of his Panchayat, that Akal Kamat son of Mahgu Kamat and Akal Kamat son of Kanhai Kamat have always lived at Rampur bungalow, that Akal Kamat son of Bhada Kamat used to reside formerly at Thakurpatti but later shifted to Rampur bungalow and that he sent the Gram Panchayat Paribar Pustika Register through the Gram Sewak to the Presiding officer when a dispute arose about Akal Kamat son of Bhada Kamat. R.W. 25 is Urmilesh Jha. He says that he did not take any Akal Kamat to Bangaon booth for casting his vote. The Presiding officer (R.W. 7) says that he allowed Akal Kamat to vote after being satisfied about his identity. On the basis of the evidence of these witnesses we are satisfied that Akal Kamat who was previously a resident of Thakurpatti but who had shifted to Rampur bungalow was rightly allowed to vote and that there was no case of false personation.

(c) *Seshmani bearing serial No. 342.*—P.W. 29 says that Seshmani is the wife of Siasaran Mandal of Garhia, that a woman who came to vote as Mosst. Seshmani gave her name as Jhitki, that the Presiding officer turned her away and did not let her vote, that Ramesh Jha brought her again about half an hour later and said that she should be allowed to vote as she was Seshmani, that the Presiding officer then allowed her to vote in spite of objection and that he filed a petition (Ext. 5) in this connection. In the petition, (Ext. 5), P.W. 29 has stated that Seshmani, wife of Siasaran Mandal, gave her name to the Polling officer at first to be Jhitki, that she was then sent back, that Babu Ramesh Jha later brought her to the booth and that she was then allowed to vote as Seshmani in spite of his objection to the effect that she had previously given her name to the Polling officer as being Jhitki. It has to be noticed that the evidence of P.W. 29 before the Tribunal is that the woman gave her name as Jhitki before the Presiding officer whereas he has alleged in the petition (Ext. 5) that she had given her name as Jhitki to the Polling officer. The

order (Ext. J) of Mr. Chakravarty (R.W. 7) on the petition (Ext. 5) is as follows:—
 "This is with respect to Elector No. 342 of village Garhla, P.S. Bangon. She was got identified by the village chowkidar on being moved by Babu Ramesh Jha, the candidate." In his evidence, R.W. 7 has said that he was satisfied about the identity of Seshmani before he allowed her to vote. R.W. 13 is Siasaran Mandal, the husband of Seshmani. He says that his wife went with him to the polling booth, that he stopped outside the split bamboo fencing when she went inside the booth, that she once came back without voting, that she again went into the booth and that she was then allowed to vote as she was identified by the chowkidar. He appears to be a thoroughly disinterested witness. It has been argued that he could not have been present because if he had been present he and not the chowkidar would have been asked to identify his wife Seshmani. The Presiding officer may not have known of the presence of R.W. 13. Hence he could not have called upon this witness to identify his wife. We are not prepared to disbelieve his evidence merely because he was not asked to identify Seshmani. In view of the entire evidence, we hold that Seshmani herself voted in her own name and that she was allowed by the Presiding officer to vote after he was satisfied about her identity. This was also not a case of false personation.

13. Gangadhar Thakur (R.W. 6) was posted as the sub-registrar of Bangaon. He is a Brahmin by caste. At the last election, he was deputed to work as Presiding officer at several polling booths e.g. Rakia, Pachgachhia and Patori. It is alleged by the petitioner (a) that this Gangadhar Thakur was siding with Ramesh Jha, respondent No. 1, who saw him at his quarters in the U.P. school at Rakia for some time, (b) that Gangadhar Thakur spoke to the petitioner's polling agent at Patori and Pachgachhia about sympathising with Ramesh Jha and (c) that Gangadhar Thakur closed the polling at Rakia booth about 10 minutes before the closing time and did not allow about 100 to 150 voters who were in the polling enclosure at the time when the polling was closed to cast their votes.

(a) P.W. 13 says that the Presiding officer (i.e. Gangadhar Thakur) was staying in the U.P. school at Rakia and that Ramesh Jha went into that school a day previous to the date of commencement of polling at Rakia booth. He admits that the Polling officers, the Police party as well as the Presiding officer used to reside in the school and that he merely saw Ramesh Jha coming out of the school. Hence his evidence does not show that Ramesh Jha necessarily saw the Presiding officer in that school. P.W. 20 says that he saw Ramesh Jha getting out of the U.P. School compound at Rakia on 3rd January 1952. He does not say that he saw Ramesh Jha talking to or visiting Gangadhar Thakur. P.W. 4 says that Ramesh Jha is intimate with Gangadhar Thakur but he admits that he never saw Ramesh Jha and Gangadhar Thakur having any intercourse with each other. He was the petitioner's polling agent at Rakia during the last election and is thus an interested witness. It seems to us that none of these witnesses can be relied upon and we, therefore, hold that it has not been shown that Gangadhar Thakur was sympathetic towards Ramesh Jha or that Ramesh Jha met him in his quarters in the U.P. School at Rakia on 3rd January 1952.

(b) P.W. 14 was the petitioner's polling agent at Pachgachhia polling booth. He says that Gangadhar Thakur told him that people should sympathise with Ramesh Jha. We consider it highly improbable for a Presiding officer to have told the polling agent of one candidate to sympathise with another candidate. P.W. 14 is an interested witness and we are not prepared to rely upon his evidence.

P.W. 15 was the petitioner's polling agent at Patori booth. He says that Gangadhar Thakur told him that people said that he was siding with the Socialist candidate but no other candidate could possibly have won if he had sided with one candidate, that Gangadhar Thakur told him later on the same day that Ramesh Jha was the most suitable and also the best candidate though poor and that a Polling officer named Harikirtan Prasad objected to the Presiding officer speaking openly in this fashion, Harikirtan Prasad is P.W. 40. He has stated that he heard Gangadhar Thakur telling Baidyanath Thakur (P.W. 15) that people said that he was supporting the Socialists and that no other candidate could win if he actually supported any particular candidate, that he protested with the Presiding officer saying that there should be no such discussion at the time of polling and that he (the Presiding officer) did not give any reply. The evidence of P.W. 15 relating to the other statement of Gangadhar Thakur has not been supported by anyone and we are unable to accept his evidence about that statement because we do not think that any Presiding officer could have made such a statement to the polling agent of one candidate about another candidate. Even supposing that the statement which is supported by Harikirtan Prasad (P.W. 40) was actually made by Gangadhar Thakur, we do not think that Gangadhar Thakur did anything illegal by

protesting that he was not helping any candidate. It seems, however, that the evidence of HariKirtan Prasad (P.W. 40) himself is not acceptable. R.W. 2 is the Additional District Magistrate of Saharsa and the Dharhara constituency lay within Saharsa sub-district. R.W. 2 was supervising the entire election within the sub-district of Saharsa. He says that under his orders HariKirtan Prasad was removed from the post of senior Polling officer and Satyanarain Prasad was appointed in his place. Ext. F is a copy of his order and it supports his evidence. Ext. C-2 is a letter sent by this officer to the Returning officer. In this letter, he has said that he made personal enquiry and found that the allegations against the Presiding officer were absolutely baseless whereas HariKirtan Prasad had an alliance with the Congress group of the Dharhara constituency and hence he had removed him from his post as senior Polling officer. On a consideration of all these circumstances, we feel that HariKirtan Prasad's evidence cannot be accepted. As P.W. 15 is an interested witness, his evidence also to the effect that Gangadhar Thakur told him that he was not helping any candidate cannot be accepted. We rather accept the statement of Gangadhar Thakur (R.W. 6) that he did not speak to the polling agent of any candidate.

(c) The Civil Court peon (P.W. 3) says that the Presiding officer of Rakia booth closed the polling 10 or 15 minutes before time on the first day of poll there and that about 100 to 150 voters were within the enclosure at that time P.W. 4 was the petitioner's polling agent at that booth, P.W. 13 is a resident of Rakia, P.W. 22 is the chowkidar of Rakia and P.W. 33 is a dafadar. These witnesses, namely, P.Ws. 4, 13, 22 and 33 have supported the evidence of P.W. 3. P.W. 34, 35, 36 and 37 are some women voters and they say that they were not allowed to vote even though they waited in the enclosure at the booth in Rakia for a considerable time.

P.W. 30, the Writer Head Constable, says that some voters came into the enclosure at Rakia booth on 4th January 1952 i.e. the first day of poll there. After the polling was closed and that the polling agent of the Congress candidate gave out that there were still 10 minutes left for the time of closing of poll. He has been cross-examined on behalf of the petitioner with the Tribunal's permission. Neither party relies upon him and hence we are not prepared to accept his evidence. HariKirtan Prasad (P.W. 40) has stated that the polling was closed according to his watch at 3-50 P.M. on the first day of poll at Rakia, but he admits that he did not notice the time by his watch when the polling was started as the polling was held in accordance with the Presiding officer's watch. He does not say that any voter who was in any of the enclosures at the time when the polling was closed was not allowed to vote.

Gangadhar Thakur (R.W. 6) says that he did not stop polling at Rakia booth 10 minutes earlier and that it would be false to say that there were 100 to 150 voters within the polling enclosure at the time when the polling was stopped. On a complaint made on behalf of the petitioner, Sri Sahdeo Choudhry (R.W. 1) was deputed to hold an enquiry. After making the enquiry, he submitted the report (Ext. D). This report shows that R.W. 1 was satisfied that the polling was closed at the right time after due and proper notice to the persons standing outside the booths and that nobody came within the enclosures. R.W. 18 is a resident of Rakia and he says that he was one of the last five voters who voted at Rakia booth on the first day of polling and that there was no other voter in the enclosure at that time. It has been brought out from him that the police man blew his whistle outside the enclosure before the polling was closed. He has stated that he polled his vote at about such and such time which we have taken as being about 3-45 P.M. On this basis, it has been argued that even P.W. 18 admits that the polling was closed before time. We are not prepared to accept this argument because a witness like P.W. 18 cannot have a very clear idea as to the actual time. R.W. 21 was the relieving polling agent of Ramesh Jha at Rakia polling station. He and Ramesh Jha (R.W. 27) have denied that the polling was closed 10 minutes earlier and that there was any voter in the polling enclosure at the time when the polling was stopped on the first day of poll at Rakia.

After a careful consideration of the evidence adduced on behalf of both sides we hold that the evidence adduced on behalf of respondent No. 1 is more reliable and that the evidence adduced on behalf of the petitioner is not reliable. We, therefore, hold further that the polling was not closed before time and that there was no voter in the polling enclosure at the time when the polling was closed on 4th January 1952 at Rakia who was not allowed to vote.

In view of the findings recorded above it is clear that Gangadhar Thakur did not try to help respondent No. 1 in any way. We may mention that the Additional District Magistrate of Saharsa appears to have removed HariKirtan Prasad from the office of senior Polling officer on 15-1-52 as his order (Ext. F) in this

connection mentions that Satyanarain Prasad will join as senior Polling officer "tomorrow" (16-1-52). On 16-1-52 a petition (Ext. 2) was filed by the Secretary of the Saharsa District Congress Committee before the Returning officer. It was in this petition that the allegations that we have just considered were specifically made. We feel that it is likely that allegations against Gangadhar Thakur were made in this petition as a result of the removal of HariKirtan Prasad from the post of senior Polling officer and that they are not correct.

14. The petitioner alleges that Mr. A. C. Chakravarty (R.W.7) was also sympathetic towards Ramesh Jha and that in view of this sympathy (a) he made some delay in putting back the petitioner's symbol on his ballot box on 17-1-52 at Sihaul booth when he was told by the petitioner's polling agent that the symbol was missing and (b) he allowed many bogus votes to be passed on behalf of Ramesh Jha. We proceed to consider these allegations one by one.

(a) Votes were polled at Sihaul booth on the 14th, 15th, 17th and 18th January, 1952. Babua Jha (P.W.5) was the petitioner's polling agent at that booth. He says that he was absent from the booth on the 3rd day of poll i.e. 17th January, 1952 from about 9-30 A.M. up to about 11 A.M. and that Upendra Pandey (P.W.9) acted for him during his absence. He further says that Upendra told him on his return that Bindeshwar (P.W.18) was saying that the symbol of bullocks i.e. the petitioner's symbol was absent from the box. P.W.2 also says that when he went to poll his vote at Sihaul booth at about 10-30 A.M., the symbol of bullocks was not to be found on any box. The evidence of P.Ws. 45, 46 and 48 is to the same effect as that of P. W. 2.

R. W. 7 says that he pasted the symbol on the petitioner's ballot box as soon as it was reported to him that it had come off. He further says that he used to enter the polling compartment at intervals of 5 to 7 minutes and sometimes at the intervals of 2 to 3 minutes in order to see that everything was all right. Even P.W.5 has said that the Presiding officer used ordinarily to go into the polling compartment to see that everything was all right. Ext.K-2 is the Presiding officer's diary dated 17-1-52 Mr. Chakravarty has mentioned in this diary that the symbol remained absent from the ballot box for utmost 2 to 3 minutes though Upendra Pandey (P.W.9) had filed a petition to the effect that it remained away from the box for about 30 to 35 minutes. In the report (Ext.I-1) dated 17-1-52 also, Mr. Chakravarty has said that the time of 30 to 35 minutes given by Upendra Pandey (P.W.9) as the period for which the symbol remained missing from the ballot box was highly exaggerated. The petition filed by Upendra Pandey (P.W.9) before the Presiding officer is Ext.1. There is no allegation in this petition to the effect that the Presiding officer made any delay in re-pasting the symbol on the ballot box.

R.W.23 was the polling agent of Ramanugrah Jha at Sihaul booth. He says that the Presiding officer went inside and put the symbol right as soon as he was told that it had come off the ballot box. There seems to be no good reason to disbelieve the evidence of this witness.

In view of the evidence adduced on behalf of both parties, there can be no doubt that the petitioner's symbol came off his ballot box at Sihaul booth on 17-1-52. It is difficult to fix the exact time during which the symbol was not affixed to the ballot box but P.W.5 himself says that the symbol was found lying just to the east of the ballot box i.e. on the same side on which voters had to stand to poll votes when he went with the Presiding officer to repaste the symbol on the ballot box. Hence it cannot be said that any prejudice was caused to the petitioner simply because the symbol came off his ballot box. In view of the Presiding officer's evidence, supported as it is by R.W.23, we have no doubt at all that the Presiding officer acted quickly and re-pasted the symbol on the petitioner's box as soon as the matter was reported to him and that the time for which the symbol remained away from the ballot box could not have been more than 5 or 6 minutes. In this view of the matter, we are unable to hold that Mr. Chakravarty's action was sympathetic towards Ramesh Jha. Indeed, we believe that he acted without any partiality.

(b) We have already discussed the specific cases of false personation alleged by the petitioner and we do not think that Mr. Chakravarty allowed any bogus votes to be passed.

15. The petitioner alleges that Ramesh Jha and his workers used to canvass within a 100 yards of polling booths. P.W.12 says that some Socialists told him to vote for the Socialist party when he reached near the enclosure of the booth at Rakda. There is nothing to show that the Socialists told him anything within 100 yards from the polling booth and his allegation is rather vague because he says that he did not recognise the Socialist who spoke to him. P.W.19

says that he found Ramesh Babu canvassing outside the roped enclosure at Patori booth but he admits that he did not recognise anyone of those who were being canvassed. He further admits that he cannot give the distance between Ramesh Jha and the police man who was on duty. Thus his evidence does not show by any means that Ramesh Jha canvassed within 100 yards of the booth. P.W.23 says that one Taranand Thakur told him near the roped enclosure of Patori booth that he should vote in the box with the Tree symbol i.e. the symbol of the Socialist candidate, Ramesh Jha. He has not given any estimate of the distance between the enclosure and the place where Taranand spoke to him. Hence his evidence is also insufficient to show that there was canvassing within a 100 yards. P.W.29 says that a woman voter of Balha suggested to other women voters of the same village just outside the polling compartment that they should poll their votes in the box with the Tree symbol, that he protested loudly and that the Sergeant Major arrested her ultimately. When cross-examined, he says that this happened before 9 or 10 A.M. on 11-1-52. The diary (Ext. 6-4) dated 10-1-52 of Mr. Chakravarty shows that such an incident did take place. The report (Ext.1-5) also shows that such an incident took place. These documents, however, show that the date was 10-1-52 and not 11-1-52 as stated by P.W.29. There is nothing to show that the woman whose name has been given in Exls.0-4 and 1-5 to be Mosst. Jhinguri was a worker or agent of Ramesh Jha. We are not prepared to hold that there was any canvassing within 100 yards of any booth by or on behalf of or with the connivance of Ramesh Jha. The mere fact that one voter shouted out to other voters on 10-1-52 at Bangaon booth that they should vote in the box with the Tree symbol cannot saddle Ramesh Jha with the responsibility for canvassing.

We may mention that Taranand Pandey (R.W.21) and Ramesh Jha (R.W.27) have denied that they canvassed within 100 yards of the polling booth.

For the reasons given above we hold that Ramesh Jha or his supporters cannot be said to have canvassed within 100 yards of any booth.

16. The petitioner alleges that there were several irregularities in the counting of votes. It is said that (a) eight counting parties were counting the votes simultaneously with the result that the petitioner and his counting agent could not keep their eyes on all those parties, (b) that the Returning Officer absented himself from the room where the votes were being counted for about one hour and a door was opened and 2 or 3 outsiders came into the room and talked to the counting agent for 2 or 3 minutes during the absence of the Returning officer, (c) that the boxes in which the ballot papers were kept after counting were not sealed and (d) that the petitioner's counting agent kept notes of the number of votes found in different boxes and his notes do not tally with the notes in form no. 14. All these allegations have been supported by the petitioner's counting agent Satyadev Sukla (P.W. 21). Surajnarain Jha (P.W. 25) acted for P.W. 21 for about half an hour at about 4 P.M. and then again at the time when the votes were re-counted from 8 P.M. up to about 11 or 11-30 P.M. He says that the votes used to be kept after counting in the ballot box from which they were taken out but the boxes were not sealed. The petitioner (P.W. 49) himself says that the ballot boxes were not sealed when the ballot papers were kept in them after being counted. He further says that the Returning officer was absent for about one hour from the room when his votes were being counted.

We will now take up for consideration each of the irregularities one after the other:—

(a) Ext. 4 is a petition filed by Chitra Narain Thakur just after the votes were counted and the prayer in this petition is that the votes should be re-counted. In this petition, the petitioner has not made a grievance of the fact that eight counting parties were counting the votes simultaneously or that he or his counting agent was unable to keep his eyes on these parties. R.W. 22 is a pleader. He was the counting agent of Ramesh Jha. He says that there were six counting parties who were counting the votes simultaneously and that the petitioner himself used to sit on the dias along with the Returning officer, Mr. L. L. Sinha, the Sub-divisional Officer of Madhupura. We accept the evidence of R.W. 22 that six counting parties counted the votes simultaneously but we do not think that any prejudice was caused to any candidate for that reason because it is clear from the evidence that the counting of votes of one candidate was completed before the counting of votes of another candidate was commenced. Hence no importance can be attached to this alleged irregularity.

(b) There is no mention in Ext. 4 that the Returning officer absented himself from the room for about one hour. Although the petitioner has stated that the Returning officer was absent for about one hour, he has not supported the evidence

of P.W. 21 to the effect that during the Returning officer's absence a door of the room was opened and 2 or 3 outsiders came in to talk to anyone. R.Ws. 22 and 27 say that the Returning officer was present throughout and that no outsider came into the room. In view of the defects in the evidence adduced on behalf of the petitioner which we have already pointed out we accept the evidence of R.Ws. 22 and 27 and hold that these allegations of the petitioner are incorrect.

(c) It is impossible to accept the evidence of P.W. 21, 25 and 49 on this point because the boxes may have been sealed in the absence of these witnesses. The petitioner himself admits that after the votes of each box were counted, they used to be tied together and a check slip used to be attached to the bundle. R.W. 22 says that check slips used to be attached to ballot papers after they were counted and they were then kept in an envelope which was sealed. He further says that when the counting of all the votes of a particular candidate was over, all such sealed envelopes used to be kept in a packet which was also sealed. We accept the evidence of this witness and hold that packets in which the votes of one candidate were kept were sealed. Even R.W. 22 is not able to say whether the packets were kept in boxes or the boxes were sealed or not because he says that the sealed packets were on the table of the Returning officer at the time when he came away. We are not satisfied that any irregularity was committed in connection with the sealing of packets of ballot papers or boxes in which they were kept after counting. We hold accordingly.

(d) P.W. 21 has proved his notes (Ext. 3). They appear to have been kept rather roughly and we are not at all satisfied that the notes as to the number of votes found in each ballot box had been correctly recorded in it. Hence we are not prepared to attach any importance to Ext. 3. It is, therefore, unnecessary to consider whether these notes tally with the notes in form no. 14 (Exts. 13 series).

The petitioner has not made any other allegation of any substance. In view of the findings recorded above, we held that Ramesh Jha, respondent no. 1, or anyone on his behalf was not guilty of any corrupt or illegal practices. It, therefore, follows that it has not been shown that there was no free election due to any such practice and it has also not been shown that the election was materially affected by any such practice. We further hold that Sri Gangadhar Thakur and Sri Chakravarty did not do any act for the furtherance of the prospects of the election of Ramesh Jha. We also hold that workers of respondent no. 1 did not canvass for votes on his behalf with his knowledge within 100 yards of any polling station. Our finding also is that the counting of votes was not done in violation of any law and the manner of counting did not affect the result of the election. We thus answer issues Nos. 3, 4, 7, 9 and 10 in the negative.

Issue No. 6.—In view of our finding on issues nos. 3 and 4 it is not necessary to consider this issue. We may mention, however, that R.Ws. 11, 21, 24 and 25 have proved that Ramesh Jha and the Socialist party used to give oral and written instructions to the workers of the Socialist party to the effect that they should not canvass on caste basis, that no bogus votes should be passed and that no corrupt and illegal practices should be committed. Ramesh Jha (R.W. 27) himself has said that he used to issue such instructions. We do not see any reason to disbelieve the evidence of these witnesses and we, therefore, hold that Ramesh Jha took all reasonable means for preventing the commission of corrupt and illegal practices at the election. We thus answer issue no. 6 in the affirmative.

Issue No. 11.—In view of the findings which we have arrived at, the petitioner is not entitled to any relief.

It is, therefore, ordered that the petition is dismissed. The petitioner will bear his own costs and he will pay Rs. 500 as costs to respondent no. 1. As the other respondents have not appeared or contested the case, there will be no order as to their costs.

BHAGALPUR;

The 6th January, 1953.

(Sd.) K. SAHAI, Chairman.

(Sd.) UMAKANTA PRASAD SINHA, Member.

(Sd.) RAJESHWARI PRASAD, Member.

[No. 19/78/52-Elec.III.]
P. S. SUBRAMANIAN,
Officer on Special Duty.